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9 Attorneys for Defendant eBay Inc.

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION  
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15 WINDSOR AUCTIONS, INC., a Florida  
corporation, and JEWELRY AUCTIONS  
16 CORPORATION, a New Jersey corporation,

17 Plaintiffs,

18 v.

19 EBAY, INC., a Delaware corporation,

20 Defendant.  
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Case No. C 07 06454 RMW

**EBAY'S ADMINISTRATIVE MOTION TO  
FILE UNDER SEAL PURSUANT TO CIV.  
L.R. 79-5(B)**

22 Pursuant to Civil L.R. 79-5, eBay hereby requests that the Court enter an Order sealing the  
23 agreement between eBay Inc. and Windsor Auctions, dated April 26, 2005 ("Agreement"),  
24 referred to in paragraphs 10, 31 and 35 of Plaintiff's Complaint. This request is based on this  
25 Administrative Motion, the Declaration of Adam Sand ("Sand Decl.") filed herewith, and the  
26 pleadings and papers on file in this action.

27 **I. ARGUMENT**

28 Documents privileged or protectable as a trade secret or otherwise entitled to protection

1 under the law are appropriately sealed from public inspection by order of the Court. Civ. L.R. 79-  
2 5(a). California law defines a “trade secret” as “information ... that derives independent  
3 economic value, actual or potential, from not being generally known to the public or to other  
4 persons who can obtain economic value from its disclosure or use and is the subject of efforts that  
5 are reasonable under the circumstances to maintain its secrecy.” Cal. Civ. Code § 3426.1(d)  
6 (internal punctuation and capitalization omitted).

7 Compelling reasons support the sealing of the Agreement. First, the Agreement is  
8 protectable as a trade secret under California Law because it contains information that is kept  
9 secret by the parties in order to preserve the economic value inherent in its description of the  
10 commercial relationship among the parties to the Agreement. *See* Cal. Civ. Code § 3426.1(d).  
11 Furthermore, the Agreement contains private commercial information that is of little, if any,  
12 public concern. The Agreement specifically details the rights and obligations of the parties with  
13 respect to their commercial relationship. The Agreement contains a confidentiality provision  
14 which designates the terms of the agreement as confidential. *See* Sand Decl. ¶ 3. Each page of  
15 the agreement is marked “Confidential.” *Id.* Both parties have acknowledged the confidential  
16 nature of the Agreement. *See id.* ¶¶ 3-4; Complaint ¶ 35. Because the confidential and protected  
17 nature of the Agreement outweighs any interest in public access to the Agreement, the Agreement  
18 should be sealed by Order of the Court. *See generally Hagestad v. Tragesser*, 49 F.3d 1430, 1434  
19 (9th Cir. 1995) (trial court has discretion to determine whether the presumption in favor of public  
20 access to court documents is overridden by particular facts of a case).

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1     **II.     CONCLUSION**

2             For the foregoing reasons, eBay hereby requests that the Court enter an order designating  
3     that the Agreement be filed under seal.

4     Dated: February 12, 2008

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8             s/Heather C. Meservy  
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